

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6523 of 1984

Date of decision: 6-10-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANTILAL MAGANLAL DODIYA

Versus

MUNI. CORPN. OF CITY BHAVNAGAR

Appearance:

MR SK JHAVERI for Petitioners

MR JR NANAVATI for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/10/97

ORAL JUDGEMENT

The petitioners, 15 in number, who were working as Operators in the drainage department of the respondent Corporation filed this special civil application challenging therein the order of the Administrator of the Corporation dated 9th August, 1984 cancelling the resolution of the Board dated 29th June, 1984 under which the claim of the petitioners for parity in the pay-scale which is being given to the operators working in the Water Works Department. Reference (IT) No. 117 of 1977 was filed before the Industrial Tribunal in respect of the demand of the scales of pay in accordance with the recommendations of Desai Pay Commission wherein statement came to be recorded in which senior operators were classified along with junior clerks, conductor, drivers, tracers, wiremen, etc., in the grade of Rs.260-455, and operators were classified in the grade of Rs.260-400 along with meter reader and fitter in water works and other departments. There was no other classification amongst operators either of the Filter Department in the Water works or those in the Drainage Department and all of them were classified in one grade and the posts were interchangeable. One of the petitioners is senior operator. It appears that demand has been raised for revision of the pay-scales by the operators working in water works department of the Corporation. Thus the Standing Committee of the Corporation in their meeting held on 17th August, 1983 has taken up the matter and decided to grant pay scale demanded by the operators of that department. Resolution of the Standing Committee came to be endorsed by the General Board in its meeting held on 1st November, 1983. Thereafter the resolution made for the aforesaid demand has been withdrawn. However, benefit of these pay-scales were restricted to the operators in the water works department and the operators of the drainage department were deprived of the same. Representation dated 8th November, 1983 was made by them demanding the same pay-scale on the same terms and conditions as in respect of operators in the water works Department. The Executive Committee in its meeting held on 11-5-1984 decided to grant the same pay scales to the operators in the Drainage Department as those to the operators in Filter Section of the Water Works Department. The Executive Committee took into account the fact that operators belonged to the same category and they should have same grade, and they were liable to be transferred inter se. The General Board in its meeting held on 19th June, 1984 referred the matter to the Standing Committee. The Standing Committee reconsidered the matter and vide its resolution dated 29th June, 1984

reiterated its earlier resolution and that resolution was placed before the General Board on 29th June, 1984 and the same has been accepted.

2. The term of the Board expired on 30th June, 1984 and Administrator came to be appointed with effect from 1-7-1984. The Administrator, under his order dated 9th August, 1984 cancelled the resolution of the Municipal Corporation dated 29th June, 1985. This decision is challenged in this special application.

3. The learned counsel for the petitioner raised manifold contentions challenging the validity of the order of the Administrator dated 9th August, 1984.

4. The counsel for the respondents, does not dispute the fact that the pay-scale of both the operators working in the Drainage Department and the Water Works Department of the Corporation were identical prior to 1-1-1984. It is also not in dispute that the qualifications for appointment on the post of operators in both these departments were same, and these posts were also interchangeable. The counsel for the respondent raised only contention that the Board on the last date of its working has taken this decision which is arbitrary and mala fide. It has next been contended that the Administrator has all the powers to cancel the decision and lastly it is contended that dispute under section 10A of I.D. Act, 1947 has been raised for revision of the pay-scales and Arbitrator has given his award, which is binding on the petitioners and no relief can be granted in this petition.

5. Learned counsel for the respondents, substance , has not disputed the claim of the petitioner of parity in the pay-sale is concerned. In view of the aforesaid position, the objection taken is only of technical nature. It is true that the Administrator has all the powers of the Corporation, which includes power to review its earlier decision. But he has to record the reasons in support of his order, and the reasons means lawful reasons. The petitioners' claim for parity has been accepted by the Corporation on the ground that the pay-scale of all the operators in the different departments were the same, and at a later point of time pay-scale of only one set of operators has been revised. When the posts are of identical nature, qualification for the same were also identical, and the posts were also interchangeable and they were in the same pay-scale at one point of time, it is certainly an arbitrary act on

the part of the Corporation to restrict the benefit of revision of the pay-scale to one class of operators i.e. in water works department. Therefore, naturally the petitioners claimed parity in the pay-scale and it has been correctly accepted. Merely because on the last date of the term of elected Board this decision has been taken, on this ground the decision will not become illegal or arbitrary. The decision in respect of giving higher pay-scales to the operators of water works department has been taken on 1-11-1983 and the petitioners thereafter made representation on 8-11-1983. That matter was taken up on 17-2-1984 by the Commissioner and the Executive Committee / Standing Committee decided the matter in favour of the petitioner, which was ultimately accepted by the General Board. So it is not a case where it can be said that on the last date the decision has been taken. Though the resolution has been passed on the last date, the matter was under process since 8th November, 1983 or 17th February, 1984. In view of this position the contention raised by the learned counsel for the respondents is devoid of any substance.

6. The last contention that in view of the arbitration award the petitioners are not entitled to any relief in this petition has also no substance. The terms of reference which were made to the Arbitrator are available on record of the the special civil applicatiokn. The reference was in general terms, i.e. for the revision and rationality of the existing pay-sales of all the employees of the Corporation. This reference has been made on 15th September, 1984, i.e. after the order of the Commissioner dated 9th August, 1984. Naturally the existing pay-scale of the petitioners, i.e. operators of the Drainage Department of the Corporation is taken to be lower than what the existing pay-scale of the operators of the Water Works Department. So with reference to these existing pay-scales corresponding revised pay-scales have been prescribed and consequently the petitioners were placed in the lower pay-scale. Much emphasis has been put by the counsel for the respondents that the petitioners accepted the arbitration award and the petitioners have not made any such grievance before the Arbitrator. Both these contentions of the counsel for the respondents are devoid of any substance. The petitioners were given the pay-scale at par with the pay-scale of operators of the Water Works Department, and under the order dated 9-8-1994 that was taken back. That decision of the Administrator has been challenged by the petitioners before this court. This petition is pending for all these years. In view of the fact that the petitioners' prayer was for the pay-scale at par with

other operators of Water Works Department, it was not incumbent upon nor it was expected of the petitioners to raise objections before the Arbitrator. Even if objections would have been raised, possibly the Arbitrator would not have considered the same on the ground that the matter is subjudice before this Court.

7. Viewed from any angle, order of the Administrator dated 9th August, 1984 cannot be allowed to stand, and accordingly the same is quashed and set aside.

Now the question that arises is from which date the petitioners shall be entitled for the benefit of higher pay-scale, i.e. equalent which has been given to the operators of water works department under resolution dated 1-11-1983. From the order dated 1-11-1983 I find that the benefit of higher pay-scale has been given to the operators of the water works department from 1-1-1980, but the arrears were not given for the period from 1-1-1980 to 31-10-1983. In the resolution dated 29th June, 1984 it is not mentioned from which date the petitioners are entitled for higher pay-scale. In absence of any such date, the only date which has to be taken for giving higher pay-sale is the date of resolution. So the petitioners shall be entitled for the revised higher pay-scale, i.e. the one given to the operators in water works department of the Corporation with effect from 29-6-1984. The respondent Corporation is directed to fix the pay of the petitioners accordingly in the higher pay-scale, and the arrears payable to them shall be determined. This exercise shall be taken and completed within a period of three months from the date of receipt of copy of this order. Arrears so calculated shall be paid to the petitioners within one month thereafter. Rule made absolute accordingly. Respondent Corporation is directed to pay Rs.2,000/- by way of cost of this petition to the petitioners.

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